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EXAMINER
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GRAHAM, CLEMENT B

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PAPER

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
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7  
8 *Ex parte* GEORGE LIKOUREZOS and MICHAEL A. SCATURRO  
9

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11 Appeal 2007-2742  
12 Application 09/764,618  
13 Technology Center 3600  
14

15  
16 Decided: January 10, 2008  
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18  
19 Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and  
20 ANTON W. FETTING, *Administrative Patent Judges*.  
21 FETTING, *Administrative Patent Judge*.

22 DECISION ON REQUEST FOR REHEARING  
23

24 The Appellants filed an APPELLANTS' REQUEST FOR REHEARING  
25 UNDER 37 C.F.R. § 41.52 on October 26, 2007<sup>1</sup>.

26 The Examiner rejected claims 1-31 in the Final Rejection, mailed May 6, 2005.  
27 We affirmed these rejections in our August 22, 2007 Decision. The Appellants  
28 seek reconsideration of the decision to affirm these rejections.

<sup>1</sup> The Request included a Certificate of Mailing with a date of October 22, 2007.

1 We have considered the Appellants' arguments, but DENY the REQUEST  
2FOR REHEARING.

3 ISSUES

4 The Appellants argue that the Board misconstrued the terms "account" and  
5"funds" in claims 1, 14, 21, 24, 28, 30 and misapprehended the prior art references.

6 The issue pertinent to this request is whether the Appellants have sustained  
7their burden of showing that we misapprehended the law, the art, or the claims and  
8thus erred in sustaining the rejections of claims. 37 C.F.R. § 41.52(a)(1).

9 ANALYSIS

10 *Independent Claims 1 and 14*

11 The Appellants's arguments with respect to claim 14 are misplaced. The  
12Appellants did not place the Board in a position to make a separate determination  
13as to the patentability of claim 14. The Appellants argued claims 1-20 as a group in  
14their Brief and we selected claim 1 as representative of the group and, thus,  
15independent claim 14 stood or fell with claim 1.

16 As to claim 1, the Appellants contend that we misapprehended the proper  
17construction of the terms "account" and "funds" and the teachings of Bogosian  
18regarding credit cards (Request 6:¶ B1; 9:¶ B2; 13-14: ¶ C1). However, the  
19Appellants fail to explain, and we do not see, how the construction of these terms  
20affects the Board's decision affirming the rejection of claim 1. Regarding the  
21teachings of Bogosian, the Appellants do not contend that we misapprehended

1Appellant’s arguments in the Brief. As the Decision (p. 14) states, the Appellants  
2did not dispute that Bogosian disclosed element [4.a.]; thus, the Appellants did not  
3disagree that Bogosian disclosed all the claimed elements. We were not placed in a  
4position to consider the teachings of Bogosian regarding credit cards with respect  
5to claim 1.

6 *Independent Claims 21, 28, and 30*

7 As to each of claims 21, 28, and 30, the Appellants contend that we  
8misapprehended the proper construction of the terms “account” and “funds,” the  
9teachings of Bogosian regarding the necessity for further action by the buyer, and  
10the teachings of Bogosian and Hambrecht regarding periodic payments and  
11automatic debiting of plural accounts (Request 6:¶ B1; 9:¶ B2; 14-16: ¶ C2). Since  
12the contention applies equally to all three claims, we will focus on claim 21; our  
13discussion thereto being equally applicable to claims 28 and 30.

14 Claim 21, a system claim, required a plurality of electronic auction payment  
15accounts configured for storing funds therein. Claim 21 did not require actual  
16funds, only that the accounts be configured so as to be able to store funds. We  
17construed a payment account as a record of a customer having a business or credit  
18relationship. Decision 16; see also FF 04. We also found that storing a credit card  
19number inherently stores such a source, and thus an account that is linked to a  
20credit card for funds transfer is capable of storing funds (Decision 16: Third ¶).  
21This finding simply adds further substance to the property of customer balance  
22business accounts that necessarily, for the purposes of generally accepted  
23accounting necessities, are able to store customer debit or credit balances of

1 amounts owed to or from the business by or to the customer. That is, the capacity  
2 to record transfers from a credit card implies the capacity to record funds stored in  
3 a customer balance account.

4 The Appellants contend we misconstrued the term “account.” (Request 6:First  
5 ¶ - 7:First ¶). The Appellants concede that “the specification does not explicitly  
6 state “an account configured for storing funds there,”” Request 6, but argue that, in  
7 light of the Specification, the term “account” means “an account configured for  
8 storing funds therein and not information relating to sources for obtaining money”  
9 (Request 6). The Appellants rely on the following passage in the Specification for  
10 support:

11 Each electronic auction payment account is configured for storing  
12 funds (similar to a bank account) which can be used to effect  
13 payment, and not information relating to sources which can be used to  
14 initiate payment, such as a [sic] credit card information. Further, each  
15 electronic auction payment account is configured for the system 110  
16 to loan funds to, in case there are insufficient funds therein, to effect  
17 payment, as described below.

18 Specification 12:14-18.

19 However, the Appellants fail to appreciate that the passage relied upon is from  
20 the DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS  
21 (Specification 10:8), which describes an embodiment, not a definition of an  
22 account. The recited passage is internally inconsistent because the second sentence  
23 in the recited passage allows for just such lending of funds as a credit card would  
24 provide. This inconsistency is reconciled further in the Specification

1           The payment registration page 400 also includes several  
2           fields 404 for entering credit card information, in order  
3           for the computerized electronic auction payment system  
4           110 to charge the user's credit card and deposit funds to  
5           the user's electronic auction payment account, prior to the  
6           user 102 being deemed a winning bidder for an item won  
7           on the electronic auction web site.

8(Specification 14:3-7). Thus, the Specification does not negate the use of a credit  
9card for providing funds, but merely bifurcates the storage of customer account  
10information into a payment balance account, which does not itself have a credit  
11card number, and another customer information storage area, for the same  
12customer as the payment account, storing information such as credit card number.

13       Accordingly, the Specification does not define a payment account differently  
14than as we construed, but describes a preferred embodiment that stores both  
15payment and credit card information for a customer. This does not show that we  
16misapprehended the claim construction of payment account, or of funds, in claims  
1721, 28, or 30, but that a credit card, when linked to a customer account that must  
18already necessarily be configured to record customer credit or debit balances and  
19therefore be capable of storing funds, provides the same capacity for transferring  
20funds from a credit card to the customer payment account as the Specification  
21describes. Thus, the Appellants have not shown that we misapprehended the term  
22“account.”

23       As to the argument related to claim 21, that to initiate the extraction of the  
24credit card and shipping information from Bogosian's 1-Click settings, the buyer is  
25required to perform a manual action following the conclusion of the electronic

1 auction (Request 14: Third from last ¶), we find that Bogosian does not require this  
2 and the Appellants do not point to any portion of Bogosian that shows this to be  
3 required. The Appellants contend that the name “1-Click” implies that such an  
4 action must be taken after the auction. While we agree the name implies such an  
5 action at some point in time, nothing in Bogosian suggests it would not be  
6 performed at the time of product selection, which would be prior to an auction’s  
7 conclusion. Thus, the Appellants have not shown that we misapprehended  
8 Bogosian.

9 As to the Appellants’ argument that neither Bogosian nor Hambrecht show the  
10 limitation of periodic payment (Request 15: Fourth ¶), we found the Appellants  
11 admitted this limitation was found in Bogosian (Decision 18). Thus, the  
12 Appellants have not shown we misapprehended Bogosian in our Decision.

13 As to the Appellants’ argument that neither Bogosian nor Hambrecht show  
14 debiting an account of the plurality of accounts and crediting an account  
15 corresponding to the operator, we found this was simply a broader limitation of a  
16 limitation in claim 21, which the Appellants have not contended. In any event, one  
17 of ordinary skill understands that a customer payment account is debited and some  
18 other account, such as a revenue account is credited in any sales transaction.  
19 Neither claim 21 nor claim 30 characterized the account that is credited other than  
20 that it corresponds to the seller. Clearly, in an auction environment where an  
21 offsetting purchase from the seller must be made at the same time as the sales  
22 transaction, this purchase transaction would be recorded as a credit to the seller and  
23 a debit to purchases. Thus, whether the seller is the intermediary performing the

1 auction or the party supplying the auctioned purchase, an account corresponding to  
2 either such party is credited. The Appellants have not shown that we  
3 misapprehended Bogosian in our Decision.

4     *Independent Claim 24*

5     The Appellants contend that we misapprehended the proper construction of the  
6 terms “account” and “funds,” and the teachings of Hambrecht regarding the  
7 provision of loans (Request 6: ¶ B1; 9: ¶ B2; 16-19: ¶ C3).

8     We found above that the Appellants did not show that we misapprehended the  
9 proper construction of account or funds. While claim 24 is a method claim, unlike  
10 claims 21, 28, and 30 system claims, claim 24, like the system claims, does not  
11 require that funds be actually in an account. Rather, in claim 24, the method  
12 determines if funds are in an account and then performs financial transactions if  
13 they are not. Thus, our analysis and conclusion that we did not misapprehend the  
14 terms “account” and “funds” as to claims 21, 28, and 30 applies equally to claim  
15 24.

16     The Appellants then contend that we misapprehended the availability of margin  
17 loans in Hambrecht. Claim 24 is directed to a method that loans funds to an  
18 auction buyer when the buyer has insufficient funds in the buyer’s account.  
19 Hambrecht is a securities auction system that in some circumstances loans funds  
20 where needed. The Appellants contend that we misapprehended that there is a  
21 specific statutory prohibition that would preclude certain parties from relying on  
22 loans in auctions of new securities (Request 16-19; the statutory provision the  
23 Appellants cite is shown in footnote 5 of Request 16). The Appellants conclude



1that as a result, one of ordinary skill would not have seen Hambrecht as suggesting  
2the loan of funds where needed in an auction.

3 "The test for obviousness is not whether the features of a secondary reference  
4may be bodily incorporated into the structure of the primary reference.... Rather,  
5the test is what the combined teachings of the references would have suggested to  
6those of ordinary skill in the art." *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

7 Thus, the test for obviousness of claim 24 is not whether the specific equity  
8securities of Hambrecht could be bodily incorporated into Bogosian's auctions or  
9even into security auctions in general. Rather the test is what the combined  
10teachings would have suggested to one of ordinary skill. As we found in our  
11Decision, Hambrecht's users who are able to access credit if needed may rely on a  
12broker to ensure there are adequate funds. Decision 17. Hambrecht's claim 36  
13describes permitting extension of credit to a qualified purchaser. The Appellants  
14contend we misapprehended Hambrecht's claim 36 in that Hambrecht would  
15require full settlement of payment prior to a margin loan (Request 18:Bottom ¶¶).  
16However, the Appellants recite no portion of Hambrecht to support this contention,  
17but simply infer that Hambrecht would so operate. Thus, the Appellants have not  
18shown that we misapprehended the applicability of Hambrecht's description of  
19loaning funds in an auction environment or that one of ordinary skill would not  
20have taken at least the suggestion of such loans in auction environments and  
21applied that suggestion to Bogosian as an alternative to Bogosian's own taught  
22loaning from credit cards.

23 For the above reasons, the Appellants' Request for Rehearing is denied.

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## DECISION

5 To summarize, our decision is as follows:

- 6 • We have considered the REQUEST FOR REHEARING
- 7 • We DENY the request that we reverse the Examiner as to claims 1-31.
- 8 • The rejection of claims 1-31 under 35 U.S.C. § 103(a) as unpatentable over
- 9 Bogosian and Hambrecht remains sustained.

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## REHEARING DENIED

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